REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GOLDEN ARCHES DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6431

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 26 2004

x - x

DECISION

This case concerns a claim for cash refund or the issuance of tax credit certificate in the amount of P42,300,619.00 allegedly representing excess creditable withholding tax for the taxable year ended December 31, 1999.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at the 17th Floor, Citibank Center, 8741 Paseo de Roxas, Makati City. It is primarily engaged in the business of leasing real property *(Joint Stipulation of Facts and Issues, par. 1)*.

On April 17, 2000, petitioner filed its Annual Income Tax Return (AITR) *(Exhibit A)* for the calendar year ended December 31, 1999, showing a net loss of P114,310,603.00 and a Minimum Corporate Income Tax (MCIT) of P7,603,937.00. Petitioner also indicated in its AITR a total overpayment in the amount of P42,300,619.00 and marked the space provided for the option "To be refunded" under Item 31 *(Exhibit A-2).* In its AITR *(Exhibit C)* for the calendar year ended December 31, 2000, petitioner left blank line 26 A – Prior Year's Excess Credits *(Exhibit C-1).*

On March 27, 2002, petitioner filed its administrative written claim for refund or issuance of a tax credit certificate of its excess creditable withholding taxes for the year 1999 in the aggregate amount of P42,300,619.00 with the BIR *(Joint Stipulation of Facts and Issues, par. 5).*

On April 10, 2002, petitioner filed herein petition, to which respondent on June 13, 2002, filed his answer asserting the following special and affirmative defenses:

3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

4. Petitioner's alleged claim for refund/tax credit is still subject to administrative routinary investigation/examination by the respondent's Bureau;

5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

6. Petitioner failed to prove the following:

    a. That the total amount of P42,300,619.00 allegedly claimed by it as excess creditable income tax withheld for calendar year 1999 was fully substantiated.

    b. That the subject of the instant claim have not been carried-over or applied against any income tax liability for the succeeding taxable year/period.

c. That it has incurred tax loss for taxable year 1999.

d. That the alleged income tax payments from which the taxes were withheld were included in its gross income for calendar year 1999.

7. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Section 204 in relation to Section 230 (now 229) of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

8. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. v. Commissioner of Internal Revenue, 124 SCRA 1211).

During the hearing petitioner presented its Senior Accounting Manager, who identified the various documents pertaining to the Annual Income Tax Returns for the year involved in the case as well as the different tax certificates withheld against petitioner. On the other hand, respondent failed to present his evidence for three consecutive times, thus, petitioner moved that respondent be declared to have waived his right to present evidence which the court granted. *(Resolution dated October 13, 2003, CTA Records, p. 143).*

On February 17, 2004, this case was submitted for decision.

In their Joint Stipulation of Issues filed on September 25, 2002, the parties presented the following for the resolution of this court:

1. Whether or not petitioner's withholding tax credits for the taxable year 1999 in the amount of P49,904,556.00 are duly substantiated

by the necessary statement issued by various withholding agents, showing the amount of tax withheld from petitioner.

2. Whether or not the income upon which creditable taxes were withheld by the income payors were included and reported as part of petitioner's revenue in its income tax return for taxable year 1999.

3. Whether or not the amount of P42,300,619.00 representing unutilized withholding tax credits of petitioner for taxable year 1999 was unutilized or applied against its income tax liability for the subsequent taxable year

4. Whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P42,300,619.00 representing unutilized/excess creditable withholding taxes for calendar year ended December 31, 1999.

During the trial of the case, petitioner in order to sustain its claim for refund, presented the following documentary evidence as identified by its witness:

1. Annual Income Tax Returns for calendar years 1999 and 2000 (Exhibits A and C, respectively);

2. Administrative Claim for Refund filed before the BIR *(Joint Stipulation of Facts, par. 5);*

3. Certificates of Creditable Withholding Tax at Source (BIR Form No. 2307) for the tax calendar year 1999. *(Exhibits D-1 to D-212)*;

4. The Schedule of Creditable Taxes Withheld for the tax calendar year 1999. *(Exhibits D and E)*;

The legal basis of the claim for refund by the petitioner is Section 76 of the NIRC of 1997, partly quoted, to wit:

> **SEC. 76.** *Final Adjustment Return.*- Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> A. Pay the balance of tax still due; or
>
> B. Carry-over the excess credit; or
>
> C. Be credited or refunded with the excess amount paid, as the case may be.

The above provision undoubtedly allows the refund of the excess amount of income tax withheld over the actual income tax computed and reflected in the adjustment or final corporate income tax return of the taxpayer in a given taxable year which was not utilized in the succeeding year.

Petitioner's 1999 income tax return shows that the reported total tax credits of P49,904,556.00 far exceeded the minimum corporate income tax (MCIT) liability of P7,603,937.00 thereby resulting in an overpayment of P42,300,619.00 which petitioner marked in the return as "To be refunded". Inasmuch as petitioner did not carry-over its 1999 excess tax credit of P42,300,619.00 to the succeeding year 2000 (*Exhibit C-1*), the same appears to be refundable in accordance with the aforequoted provisions of the Tax Code.

However, the resolution of whether petitioner is entitled to claim the above excess or unutilized tax credits hinges on three important considerations, as time and again held by this court: First, the timeliness of the refund in accordance with Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997). Second, the fact of withholding of tax from the amount paid to the petitioner as established by a copy of a statement duly issued by the withholding agent. And third, the income upon which the taxes were withheld was included in the return of the recipient **(Revenue Regulations No. 6-85, as amended; Citibank, N.A. vs. Court of Appeals and CIR 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957).**

As to the timeliness of the claim for refund, the two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return *(ACCRA Investments Corp. vs. Court of Appeals, supra).* The claimed excess creditable withholding taxes pertain to tax CY 1999 ending December 31, 1999, for which petitioner filed its Annual Income Tax Return on April 17, 2000 *(Exhibit A).* The two-year period prescribed under Section 204(C) in relation to Section 229 of the NIRC of 1997 lapsed on April 17, 2002. Therefore, petitioner's administrative claim for refund filed on March 27, 2002 and instant petition filed on April 10, 2002 were both filed within the two-year prescriptive period.

To prove the fact of withholding of the reported creditable taxes of P49,904,556.00 (*under line 26G, Exhibit A*), petitioner offered in evidence various Certificates of Creditable Tax Withheld at Source (*Exhibits D-1 to D-212*), which were summarized in Exhibit E. As indicated in the summary, the total creditable withholding taxes reflected in the certificates amounted to P49,904,555.92 with the related income payment of P998,091,118.40. However, upon scrutiny of the preceding documents, this court noted that no certificate was submitted for the creditable taxes of P91,294.58 withheld by ESL Food Service with the corresponding income payment of P1,825,891.60 (*page 2, Exhibit E*). Thus, only the creditable withholding taxes of P49,813,261.34 with the related income payment of P996,265,226.80 were duly supported by withholding tax certificates.

We proceed to the third requisite. While petitioner referred to the entire income payment of P996,265,226.80 related to the substantiated creditable withholding taxes of P49,813,261.34 as its rental income for the said year (*Exhibit E*), this court found that the amount of P4,168,909.24 with the corresponding creditable withholding taxes of P208,445.46 pertains to petitioner's sale of services, thus:

Exhibit	Withholding Agent	Period Covered	Income Payment	Income Tax Withheld
D-29	Double Rise Foods, Inc. - Capas Tarlac	Jan. to March	P 345,400.00	P 17,270.00
D-30	Double Rise Foods, Inc. - Capas Tarlac	April to June	345,400.00	17,270.00
D-31	Double Rise Foods, Inc. - Capas Tarlac	July to Sept.	345,600.00	17,280.00
D-32	Double Rise Foods, Inc. - Capas Tarlac	Oct. – Dec.	345,600.00	17,280.00
D-70	Mary Gocheco – Commonwealth	Jan. to March	564,972.80	28,248.64
D-71	Mary Gocheco – Commonwealth	April to June	568,613.40	28,430.67
D-74	Mary Gocheco - Ever Gotesco Com.	July to Sept.	381,947.40	19,097.37
D-75	Mary Gocheco - Ever Gotesco Com.	Oct. - Dec.	398,468.20	19,923.41
D-150	McMighty Food Corporation	April to June	424,943.63	21,247.18
D-152	McMighty Food Corporation	Oct. - Dec.	447,963.81	22,398.19
			P 4,168,909.24	P 208,445.46

Moreover, petitioner erroneously included as part of its rental income of P996,265,226.80 the amount of P347,611.20 with creditable withholding taxes of P17,380.56, to wit:

Withholding Agent	Period Covered	Income Payment	Income Tax Withheld
Edsa Food Industries Inc.	Jan. to March	P 337,348.40	P 16,867.42
Edsa Food Industries Inc.	Oct. - Dec.	10,262.80	513.14
		P 347,611.20	P 17,380.56

The supporting certificates reflected the following total income payment of P1,738,038.69 instead of P347,611.20:

Exhibit	Withholding Agent	Period Covered	Income Payment	Income Tax Withheld
D-42	Edsa Food Industries Inc.	Jan. to March	P 1,686,724.27	P 16,867.42
D-43	Edsa Food Industries Inc.	Oct. – Dec.	51,314.42	513.14
			P 1,738,038.69	P 17,380.56

Also, the above amount of P1,738,038.69 was indicated in the certificates as "Income payments made by top 5000 corporations to their local supplier of goods".

In fine, the income payments from which the creditable taxes of P49,813,261.34 were withheld may be summarized as follows:

	Income Payment	Income Tax Withheld
Sale of Services	P 4,168,909.24	P 208,445.46
Sale of Goods	1,738,038.69	17,380.56
Rental Income	991,748,706.36	49,587,435.32
	P 997,655,654.29	P 49,813,261.34

A perusal of petitioner's 1999 income tax return shows that its reported gross income amounted to P1,014,191,820.00 *(Exhibit A-1)* which consisted of the following:

Sale of Services	P 6,750,000.00
Lease of Properties	1,007,441,820.00
	P 1,014,191,820.00

Inasmuch as petitioner's reported revenues from sale of services and lease of properties were higher than those reflected in the certificates, it may be safely assumed that petitioner declared all of the income from which the creditable taxes of P208,445.46 and P49,587,435.32 totalling P49,795,880.78 were withheld. However, since petitioner reported no revenues from sale of goods, the creditable taxes of P17,380.56 shall be disallowed.

Considering all of the foregoing, this court finds petitioner to have sufficiently established its compliance with the requirements for the refund of excess creditable taxes withheld for taxable year 1999 in a reduced amount of P42,191,943.78, computed as follows:

Gross Income	P 384,848,830.00
Less: Deductions	499,159,433.00
Net Loss	P 114,310,603.00
Minimum Corporate Income Tax (MCIT) due	P 7,603,937.00
Less: Substantiated Creditable Taxes Withheld	49,795,880.78
Excess Creditable Taxes Withheld	P 42,191,943.78

IN VIEW OF ALL THE FOREGOING, the instant petition for review is hereby **GRANTED.** Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P42,191,943.78 representing excess or unutilized creditable withholding taxes for the taxable year ended December 31, 1999.

SO ORDERED.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge